

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/308, 408	06/28/99	FELLINGER	A FLA-0010

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QM32/0209

EXAMINER

LAM, N

ART UNIT	PAPER NUMBER
3728	9

DATE MAILED:

02/09/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>09/308,408</b>	Applicant(s) <b>Fellinger</b>
	Examiner <b>Shian Lam</b>	Group Art Unit <b>3728</b>

Responsive to communication(s) filed on Dec 30, 1999.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 16 and 17 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 16 and 17 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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***Claim Rejections - 35 USC § 112***

1. Claim 16-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "whose size is determined by the number and size of the swabs" in claim 16 is indefinite because no sufficient structure (the medical swabs) has been presented to determine the size of the chamber. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 16-17 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Zackheim (US 3,162,306) in view of Moser et al (US 3,941,248). Zackheim discloses a package for medical pads comprising an envelope formed by sheet 31 and a lid 34. A plurality of compartments are formed based on the number and size of the medical pads. A breaking groove is formed on the laminate to allow a user to break through the lid 34. Zackheim discloses most of the limitations of the claims, except for the foil material. However, Moser et al disclose a roll of blister pack formed by foil base and foil lid. The user can push through the lid to reach the

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content. Therefore, it would have been obvious to use foil material for the package of Zackheim to prevent bacterial buildup in the groove area and therefore prevents infection.

*Response to Arguments*

4. Applicant's arguments with respect to claims 16-17 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to

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the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ebony Smith at (703)305-3570.

For applicant's convenience, the Group Technological Center FAX number is (703) 305-3579 or (703)305-3580. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Lam of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Lam whose telephone number is (703) 308-2039.



Paul T. Sewell  
Supervisory Patent Examiner  
Group 3700

STL

February 8, 2000